

MAINE HARNESS RACING COMMISSION
MINUTES OF MEETING
October 29, 2014
Gambling Control Board Conference Room
Department of Public Safety Building
45 Commerce Drive, Augusta, Maine

Commission Members Present: Barbara Dresser, Chair, Michael Timmons and William McFarland. Commissioner Dirk Duncan and Commissioner Reed were absent.

Staff Members Present: Ron Guay, AAG, Henry Jackson, Miles Greenleaf, Dennis May, Ralph Canney and Carol Gauthier.

Commissioner Dresser introduced William McFarland as the new Commission member. Mr. McFarland stated that he has been involved in the harness racing area for many years. He has been involved longer with the Maine Association of Agricultural Fairs and Windsor Fair specifically. His interest of harness racing and Agricultural Fairs when approached he decided that when Mr. Tracy wanted to retire that he would be able to represent the group as well as most he hopes. He's looking forward to working with the Commission and all of you even more.

ADJUDICATORY HEARINGS:

1. Commissioner Dresser asked Mr. Jackson for an update on Philip Sowers, Jr. complaint. Mr. Jackson stated that the complaint was filed by William Reepmeyer of New Hampshire and he received via email on Monday an agreement between Mr. Sowers and Mr. Reepmeyer to settle the ongoing dispute. He had indicated that in the event that Mr. Sowers failed to honor the agreement that he would like to be put back in front of the Commission. Mr. Jackson stated that he would like this matter removed from the agenda until a later date. Attorney Guay stated that the matter that was coming before the Commission was whether or not this gentleman should be licensed. We are not civil. We don't make decisions about whether people owe money and stuff. He thinks what he is hearing you say is that the facts that would have been presented to the Commission may have the understanding of the facts may be changing; and therefore, your ability to show that this man was not capable of being licensed is in question as of today. Mr. Jackson stated that is correct. Attorney Guay stated that at this point the proper thing to do would be to continue it. Mr. Jackson stated if that's what the interpretation would be, then he would ask that it be continued to a later date not specific. Attorney Guay stated otherwise, he would think that if you withdraw it then you're saying that there's not a basis in fact for the licensing; and what he is hearing him say is that it sounds like there may not be but you're not certain yet. Mr. Jackson stated it's whether or not that Mr. Sowers follows through on the agreement he and Mr. Reepmeyer have. Failure to do so would probably retrigger this matter to come back before the Commission. Attorney Guay stated ok, and just to be clear but we're not a civil court that makes people pay each other and stuff, but you had a concern about this and brought it before the Commission. Mr. Jackson stated yes. Attorney Guay stated that based on those questions his advice would be to continue it. Commissioner Dresser stated that we have continued the matter indefinitely and Mr. Jackson will keep them posted as to whether or not it goes away completely. Mr. Jackson stated yes.

UNFINISHED BUSINESS:

1. Commissioner Dresser stated that they would review the status of ongoing rulemaking. Mr. Jackson stated that the proposed changes to Chapters 11, 17 and 21 were submitted through the proper channels. The first channel is to go through the Commissioner's Office. There were some

issues that were raised concerning Chapter 11 and 21. There were some typos that were uncovered and some adjustments that were made and he has copies that were submitted to the Governor's Office. Chapters 11 and 17 are awaiting the Governor's approval before we can advertise. Assistant to the Commissioner raised some questions regarding Chapter 21. She has discussed them with Attorney Guay and he have worked on and will be presented to you on item two under unfinished business.

2. Commissioner Dresser stated that they will review Chapter 21 following concerns raised by Commissioner Whitcomb's office. Mr. Jackson presented copies of Chapter 21 to the Commission members. Commissioner Dresser asked if the changes that are shown are they from our last version or from the existing version. Mr. Jackson stated both are from their last review as well as the basis of the issue before Commissioner Whitcomb and Attorney Guay and he reviewed that is whether or not that the Commission had the authority to issue subpoenas. When they changed section 18 that raised the red flag and they worked on that and worked out some language they thought would work; and Attorney Guay since that had some discussions with people internal and he can bring you up to date on what they are looking at. Other than section 18 there were no major changes. He believes under section 14 they went away from videotaping and video recording, we did not have audio recording listed which he put in that is underlined. Section 8 was not a heading and that was a recommendation that come from Commissioner Whitcomb's office. Attorney Guay suggest dealing with the others first and then he will launch into section 18. Commissioner Dresser stated what she isn't clear on is whether the changes that are shown here are the changes of what they approved previously. Attorney Guay stated that this would be the accumulative markup so if you wish to go forward you would be approving the language you have before you which would be accumulative. Commissioner Dresser asked if he wants them to approve all but section 18. Attorney Guay stated no. He is suggesting if you have questions about the rest of it ask that. He thinks they need to have discussions about section 18 how the Commission would like to have it work because there are options. There has been a lot of research and Mr. Jackson and he can fill you in on that. Commissioner Dresser asked if anyone had any questions about any of the sections but 18. Attorney Guay stated that the harness racing statutes differ in some ways from the general ways other agencies are set up. The statutes around the way the agency are setup and the role between the department and the Commission makes harness racing different. For example, if the Board of Nursing the powers rest with the Board and then the staff acts as agents for the Board. For example, Nursing, the Board actually selects the executive director and then she selects her staff, so the power rests with the Board. This statute has delineations of the Commissioners, the Commission and the Commissioner of the Department so one of his concerns is whether or not the rules had been evaluated in light of when those changes had been made historically. Mr. Jackson and he had spent quite a bit of time independently and met for a couple of hours and walked through the rules. We think that the rules at least in Chapter 21 are ok. There was a question raised by the assistant to the Commissioner and he had discussions with her about the subpoena ability of the Commission. The statute is different than most state agencies. The harness racing statute essentially gives the subpoena power to the executive director so typically what we would see with his other clients would be given to the Commission and then the Commission would delegate the subpoena power to the staff. In this case, it's not that way. In statute, it's specifically the executive director so the concern that was raised by Mari Wells was well founded. The rule was always written as it was in existence. At the time of the rulemaking, it wasn't picked up as what the statute says the executive director has the subpoena power, so the Commissioner's don't. What they've done was make some changes that they've removed the ability for any Commissioner to issue a subpoena. That's not ok. The executive director can. He has consulted with three other assistant attorney generals. They had quite a bit of discussion internally relating to their other Boards that have different statutes in terms of the use of subpoenas. He took the advantage of the fact that he thinks

the way that this shakes out, from a practical perspective, the Commissioner's themselves cannot issue subpoenas. The way this rule is before you right now the draft right now says that it may be signed by the attorney general or the deputy attorney general. Upon further research do not think that is necessary and he can explain that in a minute. He does think the presiding officer does have the ability to issue subpoenas which is typically the way it works in most agencies. If it's the attorney general or deputy attorney general the way these things roll out the hearing officer will have a pre-hearing conference with the parties. They had a case where the attorney on the other side was discussing the concept of whether or not they would issue a subpoena to have a scientist show up and testify in a hearing. During the course of that discussion, the hearing officer was trying to determine if it is material or just an interesting fact that could be of interest but really is not critical. If it's critical then the hearing officer needs to look at other considerations. At other agencies the hearing officer hears that stuff and then makes a decision. The law says under 9060 that the agency can issue the subpoenas if it has subpoena power. Under section 278 of title 8, the executive director does have subpoena power. The presiding officer or the hearing officer is the agent of not only the Commission but can be the agent of the Department. The Department has subpoena power. This is all analysis that concluded at 8:30 this morning. He would suggest requiring Janet Mills or whatever deputy to sign the subpoena is unnecessary. Her and her deputy certainly will not have the facts nor have been privy to the argument as to why the subpoena should be issued. Where they are from the original proposal that you approved is the Commissioners cannot issue subpoenas. Commissioners cannot be an agent of the Department. The language referring to the attorney general or the deputy attorney general is unnecessary and would be cumbersome and would not add anything to the process at all. He thinks granting the authority to the executive director or presiding officer would be legally allowable but moreover with the even flow of the way things work with hearings and complaints that would probably also not only meet the legal requirements, but also meet the practical requirements of what typically happens. He's recommendation would be subpoenas may be signed on behalf of the Commission by the presiding officer or by the executive director and strikeout the attorney general or deputy attorney general as set forth in 5 MRS. Mr. Jackson stated that he would go back to; you have the Chair of the Commission serving as the presiding officer but may appoint a substitute presiding officer who is either a member of the Commission or a member of the bar. He would suggest that the Commission may be signed on behalf of the Commission by the appointed presiding officer or the executive director. Attorney Guay stated it would be presiding officer other than a member of the Commission. Commissioner Dresser asked how would that work when she asks Attorney Guay to be the presiding officer on the spot, if you have to issue a subpoena prior to a hearing how would you take care of that. Attorney Guay stated that typically what has happened is if there's been a notice of hearing issued we have had only one matter where they've had a prehearing conference. There has been three cases where the parties have had concern after notice of hearing has been issued. Commissioner Dresser stated that she thinks they may be ok because as she's reading it again, it requires approval by the presiding officer and issuance by the presiding officer or the executive director. She stated that as the presiding officer she could authorize the issuance of the subpoena and that wouldn't present a problem. Attorney Guay stated that could work. Commissioner Dresser stated that if you go back a year ago about the ongoing discussion about the subpoenas for judges with meetings and mileage. What they are doing will that have an impact on that. Mr. Jackson stated that the judges would have to appear on their behalf. They don't get reimbursed from the Commission's budget or the licensed racing venue where they are the officials. The Commission agreed that in the future if there was such an incident that occurred they would issue a subpoena for them to appear so they would get reimbursed for their mileage. Attorney Guay stated that it's a use of a subpoena which he doesn't think it's legal, but clearly it's being done for a purpose for their attendance. It's a burden and if they don't show up they can have serious consequences. It's an infringement on the person's personal liberty. He doesn't think that's legal if that's the question.

Commissioner Dresser stated that if it's going to have an impact on the system that we've been using than we talk about it now. Attorney Guay asked if she is talking about making them come to a hearing. Commissioner Dresser stated it was hearings and the mandatory meeting in the spring and any functions that we want judges to be at; they wanted to be paid for reimbursement for mileage and the only way to accomplish that was the use of a subpoena. Attorney Guay stated that it is used to compel people to appear at a hearing. He doesn't want to speak for his office, but he does believe at least in his division does not support the use of subpoenas for activities other than attending hearings. He is not going to say that's illegal to subpoena someone to go to. Commissioner Dresser stated that she would like to put that specific issue reimbursement for judges on an agenda in the future so that Attorney Guay can look into it. Mr. Jackson stated that he would ask his Resource Administrator to look into this too. Attorney Guay stated that a subpoena is an infringement on a person's personal liberty because you're telling someone on a certain date at a certain time you've got to be at a certain place. Commissioner Timmons stated that on section 18 at the bottom of the last paragraph, where it says subpoenas may be signed on behalf of the Commission. In the beginning you said that the Commission couldn't do that so that language does not sound correct. Then it says or by the executive director. Does the executive director have to first get the subpoena approved by the presiding officer? Attorney Guay stated yes. Commissioner Timmons stated so the executive director cannot issue a subpoena with the presiding officer and the presiding officer might not be a Commissioner. Commissioner Dresser stated right; it's either going to be the Chair or someone appointed by the Chair. Attorney Guay stated that the statute allows the executive director to subpoena someone to attend the hearing, but he can do that for his witnesses. He said that Title 8, Section 279 it says the executive director may sign subpoenas and administer oaths to witnesses. He checked with three other people that the executive director can subpoena people to attend hearings. Sometimes the good thing about this industry is the disputes have been less litigious and in other circumstances where we are defending the State people have sought to use subpoenas power to make the whole hearing process unwieldy to have subpoena. The presiding officer's job is to make sure that all of the evidence that people want to get in that is material and relevant gets in front of you folks. The industry is very good here. Does that answer your question Commissioner Timmons? Commissioner Timmons yes and if on page 18 at the bottom of the page is that how the rule is going to read. Subpoenas may be signed on behalf of the Commission or by the executive director. Commissioner Dresser stated that it doesn't say by Commission members it's signed on behalf of the Commission. Attorney Guay stated that this is a metaphysical kind of and in your statute the Commission hears the evidence and issues the ruling. The way the statute is written the Department does the subpoenas and administers the oath and the presiding officer can administer the oath. Commissioner Dresser stated that if you back up to the beginning of that paragraph the Commission may issue subpoenas. It's the Commission as a body may issue subpoenas and then it goes into detail of who physically does that. Attorney Guay state that if a bill goes in there may be a way to get this statute to make it so that it reads a little bit more consistently with the way the rest of State Government generally works. He thinks it's ok to say the Commission may issue subpoenas but then you limit it to the presiding officer who by virtue of the agency relationship with the executive director and the Department can do that. The bottom line is a proceeding before the Commission. It's not a proceeding before the Department. The Commissioners hear the evidence and the Commissioners make their ruling. Mr. Jackson stated that the purpose of this rule was to allow someone other than the Department who is investigating and will prosecute the opportunity to get their witnesses before the Commission because you wouldn't expect the prosecutor to issue subpoenas to the defense witnesses. This is a way the defense witness's defense gets his or her witnesses before the Commission. The Commission may issue the subpoenas on behalf of Mr. Additon because you're going to bring Mr. Additon before the Commission. Mr. Additon says he needs to have his witnesses and he says to the Commission will you authorize the issuance of

subpoenas so that he can have his witnesses to defend me against your action. The hearing officer would look to see whether or not that would be appropriate and that person would issue the subpoenas on behalf of the Commission. Attorney Guay state that the Commissioner's don't want to hear why someone wants to bring a witness because then you're going to hear the facts. You can't hear that you've got to hear the evidence the day of the hearing. Commissioner Dresser state that whoever the presiding officer is is going to need to hear why the subpoena is being requested. Attorney Guay stated that if you hear that and any of the evidence is discussed then you would be disqualified. Commissioner Dresser stated that the way it reads right now the presiding officer which is her until she appoints someone else has to approve the issuance of a subpoena. Attorney Guay stated that you appoint the presiding officer you don't need a vote. He stated that from now on he will check with Commissioner Dresser and say we have a notice of hearing we need a prehearing conference do you want him to handle that. Commissioner Dresser stated procedurally that's fine but do we need to tweak the wording of section 18 to make it clear that the presiding officer may not be the Chair. Attorney Guay stated no that would be his advice. Commissioner Dresser stated that when the next Chair comes along who may be a trial attorney who wants to act as presiding officer then we have a problem. Mr. Jackson state that he thinks we can address that by using the same language that he did as to who can sign a subpoena as to who can authorize the subpoena and if you do that you can say to be approved by the presiding officer other than a member of the Commission. Attorney Guay state that the best fix is to change the statute but until then he guess you can write it that way. Commissioner Dresser stated how about approval by the presiding officer appointed by the Chair as approved by the Chair and then it would flow through from that point on as long as the Chair doesn't appoint his or herself. Mr. Jackson stated or someone other on the Commission. Attorney Guay stated that there would be another clause presiding officer, and he's not saying these are the words, to the extent not a member of the Commission that's the concept. We can add something like that. Again, the best thing to do is fix the statute because what we have is the presiding officer under 9060 title 5 has the ability to do it as an agent of the agency. The agency has subpoena power the Department does. Your statute has the Chair who is the presiding officer by default but the subpoena power doesn't rest with the Commission, so that's the disconnect. Once you get that disconnect fixed then all this other stuff will fall into place. That's the way it usually works. Commissioner Dresser stated that it's been awkward that our statute and our rules have provided for the Chair to act as hearing officer but yet still decide on matters. Attorney Guay stated that other Boards the Chair will act as presiding officer at times but he believes he never had one do that, but talking to his colleagues it's not the majority practice. Other agencies do it but they have a different structure. Commissioner Dresser asked if Attorney Guay and Mr. Jackson want to work on fine tuning the language and then have them look at it next time or do you want make a decision today. Attorney Guay stated that you could have a motion to approve the rules as presented today with the following amendment, and then we could take a few minutes and write that out and attach it to this document. It's up to you. Commissioner Dresser stated that she thinks the proposal earlier to remove the references to the AG's office. Attorney Guay stated that you strike starting under the underlined language and in its place you put the presiding officer. Commissioner Timmons stated that perhaps you need to do it and bring it back to us. Attorney Guay stated that you can approve whether or not the motion but you cannot approve the subpoena. First, it's got to get by the presiding officer and then it has to be signed by the presiding officer who is not a member of the Commission or the executive director. Commissioner Dresser stated that it can't be executed by a member of the Commission because statutorily that's prohibited. Attorney Guay stated that they don't have that authority. The presiding officer has the ability to rule on motions. That's by definition what a presiding officer does. Commissioner Dresser asked if the statute preclude Commissioner members from signing a subpoena. Attorney Guay stated that it does not authorize you to sign a subpoena. Commissioner Dresser stated that if a Commission members is acting as a presiding officer doesn't that take care of that. Attorney Guay stated that if

you're the presiding officer and he has a client and he files a motion for a subpoena for Dr. Kevorkian or something and he files that with the hearing officer. The hearing officer will schedule a time and give notice to Mr. Jackson and to the lawyer to hear an argument on the motion. The presiding officer will hear the argument by the attorney, hear the argument by Mr. Jackson and rule on the motion. The next step would be because the presiding officer by statute now if it's you does not have authority to sign it would have to get Mr. Jackson to sign it. Commissioner Dresser stated that's what she was asking. Commission members are not allowed to sign subpoenas. Attorney Guay stated no, but you can rule on the motion before the subpoena is issued there has to be a motion. This is weird. It is disjointed. Presumably the person that rules on the motion the presiding officer can also sign it. He has found compelling reason why this person has to show up; therefore, he will sign the subpoena. Commissioner Dresser stated that instead of if the Chair acts as presiding officer and approves it we then have to have the prosecutor sign the subpoena. Attorney Guay state that this is odd presumably he's been arguing if he actually had a motion. Commissioner Dresser stated that she agrees with Commissioner Timmons to take it back and write it and bring it back. Attorney Guay asked before he drafts language, are you saying that you don't won't to be in a position that you are hearing a motion that you can't subsequently authorize the subpoena. Commissioner Dresser stated no, she wasn't understanding the part one of the paragraph versus part two just continue on with the direction you've been going in and get some language to us. Commissioner McFarland stated that earlier when we spoke about the subpoena being used to pay travel expense he agrees that he does not feel that is an appropriate tool to have to pay someone a few cents a mileage for attending a meeting that they voluntarily plan on attending anyway. He doesn't know how the Department goes about fixing that but it doesn't seem appropriate to subpoena someone just to pay them mileage. Commission Dresser stated that was a hot topic for many months within the last year or two so it's a good time to revisit it in light of this chapter being changed.

Commissioner Dresser asked if there was any other unfinished business. Mr. Jackson stated that the MSBOA has a request for rulemaking. Ms. Perkins stated that Chapter 9, Section 5 subsection 2 needs to be fixed. She stated that money that goes into the purse fund is from live handle, Hollywood slots and from the Oxford Casino. In 2002 or 2003 when Hollywood Casino went in they put in Chapter 31, Section 1037, 230 what that did was put money from the Sire Stakes Fund in to allow for promotion. When Oxford Casino went in this was an error that they did not put into this section so they could get money from Oxford Casino which they get a percentage of that they could use for promotion. That subsection 281 has to do with the Oxford Casino money. Commissioner Dresser asked if this was in Title 8. Mr. Jackson stated yes. The reference to Chapter 31 section 1036 subsection 2C is the racino dollars that are generated at Bangor and the new reference of subsection 2A.I is monies that accrues from the Casino operation in Oxford. Currently, the money that's being generated by the Oxford Casino for the Sire Stakes Program is not included in the monies that are available for the promotion of the Sire Stakes Program. The MSBOA would like to include that section of the statute in this rule so they can capture some of that money to be used for the promotions. Ms. Perkins stated that when that statute was passed for Oxford Casino this was an error they did not put this in their Chapter 9 for the Sire Stakes. Commissioner Dresser asked where these funds have been going. Mr. Jackson stated that the funds coming from the Oxford Casino have been used for supplemental purses for the Sire Stakes Program in addition to the monies being used to pay for the MHHA's percentage that they access the purse distribution under 286 and Chapter 31, section 1036 which would be the Casino and the racino dollars. Commissioner Dresser stated that we've been doing what. Mr. Jackson stated that they have not been taking any of the money from the Oxford Casino revenues to support the promotion activity of the Sire Stakes because it's not allowed by rule. By changing the rule and including that section, then they will be able to tap into and use some of that money for promotional programs that they're offering. Commissioner Dresser stated

that the statute already provides for. Mr. Jackson stated yes and the rule was changed in 2006 to capture money from the racino. Commissioner Dresser asked if it was possible to have the statutory references that would be helpful. What would you like for them to do procedurally to make it happen? Ms. Perkins stated that they would like the Commission to put this into Chapter 9. Mr. Jackson stated that Mr. Kelley was not aware that the fact that they were not able to capture the dollars from the Casino as they were from the racino for promotional activities. Mr. Kelley asked what would be required. Mr. Jackson stated that they would need a rule change.

NEW BUSINESS:

1. Commissioner Dresser stated that they will review the Commission's time line for meetings through the end of the year. Mr. Jackson stated that they currently will be meeting November 13, 2014 for the licensing and race dates. He also stated that he would possibility to meet twice in December. Attorney Guay asked what would be on the agenda for the 19th. Mr. Jackson stated that it depends a great deal on the split testing issue. Commissioner Dresser asked if we have a judge's appeal. Mr. Jackson stated yes. Commissioner Dresser asked if the 19th was good for the other Commissioners. Commissioner Timmons and Commissioner McFarland both stated that it was good for them. Mr. Jackson stated that December 12th would work for him.

REPORTS:

1. Commissioner Dresser asked for Mr. Jackson's executive director report. Mr. Jackson stated that they have resumed racing at the two commercial tracks. Everything is going well at this point. He talked with Dennis May, State Racing Steward at Scarborough Downs and he said the track is holding up fairly well except it was getting a little soft down around the rail. He said everything is going well at Bangor. Mr. Canney has not indicated that there are any issues at this point. We have hired to fill the two positions for veterinarian technicians at Scarborough and Bangor. Jennifer Flint has been hired at Scarborough Downs and Jaime Constanzer was hired at Bangor.

Mr. Jackson stated that all the applications for OTB's, Live Racing and Full Card Simulcast have been received and reviewed and are complete. All the financials have been submitted to the company that reviews the financials and provides the Commission with a report as to the financial status of each of the applicants.

Mr. Jackson also stated they do have the final results of the finals at Scarborough Downs and the payment is being released this morning from our office and should be available for Scarborough next week.

Dr. Sams indicated to him this morning that he should have a preliminary report on the 17th testing by the end of this week and the final results will be available next week. He was going to push those forward if there were no suspicious samples because of the monies involved. Commissioner Dresser stated if there were no suspicious results the funds could be released. Mr. Jackson stated if there were no suspicious samples out of the preliminary results then they would be released immediately.

He stated that the issue of the added money at Oxford. He talked with the officials at Oxford while he was there and there was a miscommunication as to whether or not the contract had been signed by Oxford with the MHHA, and once it had been determined that it had it was discovered on race day of September 11th. There was supposed to be monies added at that time and the information never reached the treasurer's office and there were never any adjustments to the pay slips going up. He has left it with the Director of Racing, the President and the Treasurer to find out whether the money is going to be added. If it is there will be subsequent checks issued. If they aren't going to do it there

isn't much he can do to it until a complaint is filed by the MHHA for not adhering to the contract. Commissioner Dresser stated that since Mr. Higgins is the representative of the MHHA and is present today, are you aware of this situation. Mr. Higgins stated that he is aware of it now. Mr. Jackson stated that there were three races in that division and one of them was non-betting so the contract indicates that a minimum of \$1200.00 shall be added to each betting race. In the event that there's a non-betting race the monies that should have been added is divided equally amongst the three so that there's an even distribution of the dollars. He indicated that to the management at Oxford so that they understand if they go that route how much they have to add to each one of the purses. Commissioner Dresser stated that she knew that the director of racing understood that was happening. She thinks there was just a breakdown in communications. Mr. Jackson stated that the non-betting race purse payment slips never go to the treasurer so he forwarded to her the breakdown of what was supposed to be paid for the non-betting race. He realized by looking at the program that it was all the non-bettors that had not been paid. Commissioner Dresser stated that this was brought to her attention by one of the individuals who did get a check in one of the betting races and he has brought it up to her five times since Fryeburg. She thought this has been taken care of but it hadn't been. Mr. Higgins stated that that's what he thought had happened. There has been more than one miscommunication.

OTHER BUSINESS:

1. Commissioner Dresser asked for a motion for the approval of the Decision and Order for Pioneer Gaming, LLC d/b/a Sanford OTB. Commissioner Timmons made a motion to accept the application and Decision and Order for Pioneer Gaming, LLC d/b/a Sanford OTB. Commissioner McFarland seconded. Vote 3-0.
2. Commissioner Dresser asked for a motion for the approval of the Decision and Order for David Miller Complaints 2014 MSHRC 006, 2014 MSHRC 007 and 2014 MSHRC 019. Commissioner Timmons made a motion to approve the Decision and Order for David Miller on complaints 006, 007 and 019. Commissioner McFarland seconded. Vote 3-0.
3. Commissioner Dresser asked for a motion for approval of the Decision and Order for Maynard Morrison Complaint 2014 MSHRC 005. Commissioner Timmons made a motion to approve the Decision and Order for Maynard Morrison Complaint 2014 MSHRC 005. Commissioner McFarland seconded. Vote 3-0.

Commissioner Dresser asked if anyone had anything to report. Commissioner Timmons stated that the first day of their fair, thirteen girls came in to volunteer to help with Donald Richards's day, and everyone in harness racing and those outside of harness racing came forward and they were able to raise \$7,450.00 for Donald Richards's day. As mad as he was initially, he had a very wonderful time. He came to him and said that he would like to send a majority of that money to the people that saved his life; so \$5,025 went to the Cumberland Fire Rescue people, \$500 went to John Fenderson for holding him in his arms while he was on the ground. In addition to that, \$1200 went to the Make a Wish Foundation and \$250 went to a little boy that's parents have had over \$700,000 worth of expenses and even the balance that they have had to pay have put them in debt. His point being that through all of that giving and everything, the harness racing people stepped up to the plate. Commissioner Dresser gave a gift to him something that she made and he will state that it will benefit someone else that has a need. There is a lot of people in this industry that make it special and he wanted to thank everyone in the industry. Mr. Jackson stated that a special thank you should go to you Commissioner Timmons and Cumberland Fair for all that you people did in recognizing Donald Richards and the benefits that came out of that day.

Commissioner Dresser stated that she would like to acknowledge Mr. Higgins had a horse race in the invitational Yonkers track. He came in 4th and maybe 3rd if there was no traffic trouble. He represented Maine and Jason Bartlett drove him.

PUBLIC COMMENT:

Commissioner Dresser asked if anyone had anything for public comment. Mr. Higgins asked if the Commissioners have any further information about the timing of post-race testing and if there's some way we can get out of the contract. Commissioner Dresser stated that the statement that she made at Windsor was the preliminaries were coming back in two weeks were very inaccurate. Attorney Guay suggested that they have a discussion in executive session. Mr. Higgins asked if they are doing out of competition testing as well. Mr. Jackson state that they haven't done any since mid-summer. It's difficult when you don't have staff. He is responsible in the drug testing program in the draft animals and he had to assist in draft animals as well as Miles. Commissioner Dresser asked that now the fairs are over can they start doing once a month. Mr. Jackson stated that now they have the staff so they can get some of that testing done.

Mr. Canney stated that he noticed that some of the results of these tests are just over the magical limit set by Kentucky and this commission. He thinks this commission should have a leeway on some of those tests. Commissioner Dresser stated that it was her understanding that leeway is built into the level that's used by the lab. Mr. Jackson stated that the standards that have been adopted by the racing jurisdictions are those standards that have the built in what they call standard deviations. When you're looking at flunixin or banimine at a threshold of 20 that is indicative that anything above that is really a violation of the rules because, quote on quote, the standard deviations are built in before the standards are developed and adopted. He would have to verify that with Dr. Sams. When we were doing our research here as it related to the TC02 testing program we had to build in three standard deviations. Initially we only built in two, but other racing jurisdictions were using three so they went back and changed their levels to reflect three standard deviation. He will check with Dr. Sams to make sure that is what their standards are. Commissioner Dresser stated that he discussed that with them at the medication forum in March and Dr. Matzkin has discussed it too. Attorney Guay stated that he thought he had heard testimony that for example a finding of 23 on the flunixin could be indicative of the material being administered like an hour beyond the time. Just to be clear it's not necessarily three deviations may be inaccuracy but doesn't mean the horse had three times the permissible level. To Mr. Canney's point, a small deviation may have been a violation of an hour or an hour and a half. Is that correct? Mr. Jackson stated that as he understood Dr. Sams explanation back in March, the threshold levels are developed using administrative time on several horses and having samples drawn at the time of racing to determine what those levels would be at that point. That is using the 24 to 48 hour which ever one it is and when it was administered and then the horse would test exactly 24 or 48 hours afterwards. Those results were then compiled and then they went to the three standard deviations so that the upper threshold and you exceeded that and that would be one of two things. You either administered more than you should have or you didn't administer it at the time you should have. The smaller the variation from the threshold it's more a time frame than a dosage. That was his take. As an example you get back from Bangor at 9:00 at night and you're going to be racing at Scarborough at a given hour on 48 hours out and oh I should have given banamine and you should have given it at 8:00 and you give it at 9:15 you're going to get a little bit of a variance. How much a variance should be allowed, he doesn't know. Commissioner Dresser stated that it depends on the weight or the metabolism of the horse. Mr. Sweeney stated just to follow up with Mr. Canney's remarks. As a member of the ADHOC committee on rules review, once we get to Chapter 17 we are going to have safeguards built in to the penalty phase for violations specically with the NSAIDs mediations would result in written warnings. Attorney Guay stated that

in observation to the extent that the testing cost. One of the things Mr. Jackson has been trying to find is that on some substances the cost are very high and right now it's not a rule, but the policy of the Commission is to issue the automatic suspension upon a positive test result including test result for the anti-inflammatory that may be a small percentage above. He understands the argument that say it's a violation because we have level testing and he is a significant proponent of level violations. He thinks the one thing for the Commission to consider for potential advice to the Department is the cost of split testing on some of these substances. The cost for a licensee to avoid a suspension pending the hearing would appear to run 4 to 5 times what the typical fine that you have been issuing. He's wondering if there might be some guidance to the Department. What has been happening is the licensee in order to prevent a suspension is spending money in excess of what they probably would get or could get or historically have been getting at the hearings in order to avoid the suspension. Once they're suspended they are not racing. Commissioner Dresser asked Attorney Guay to explain to those that were not here last time how the automatic suspension works. Attorney Guay stated that the statute allows for suspension of licensees there is a specific provision that allows harness racing to suspend people without a hearing. It says "may" it doesn't say "shall" and during the course of practice implementing that statute and he's not sure if it's the Commissioner or the Department that has adopted the position that there will be the automatic suspension. That is permissible but to be clear of the suspension itself would be considered by a court as disciplinary. Harness racing, prize fighting and gambling in other boards if it's a public emergency, like someone is going to kill someone, then we can suspend their license. It's very unusual and powerful remedy and now we have a history of prosecutions and Commission decisions on certain offenses which the results of those, the decisions that the Commissioners have given in terms of the penalties have been less than 30 days suspension and less than \$600 or \$700 in out of pocket cost. Not saying that someone that scores a 22 on a banamine gets a pass; he's not suggesting that, but suggesting that prior to implementing a suspension where they're not racing that you would actually hold the hearing, hear the facts certainly if there's something that is jet fuel or something like that. He thinks that's what the statute is intending to protect if the horses are really getting juiced up on something that's going to be completely unfair to the other competitors that needs to happen. If someone is implementing an anti-inflammatory and they missed it by a couple of hours, to have that person suspended and lose their livelihood for 30 days when in fact the Commission may not find that to be an appropriate remedy he's just suggesting that may not be the best course of conduct right now for certain classes of violations. Mr. Jackson stated that it was when he came on board in harness racing that the Commission went to suspending an individual's license if there was a positive test reported. He now calls it an alleged positive test because that's your last initial response. Up until maybe 5 years ago, those were signed by the executive director and it was determined that the Commission can only suspend and not the Department, so now they come under the office of the Chair of the Commission to sign. That was to keep somebody from further taken advantage or unfair advantage of the betting public and that's basically what it was. It was preventing someone from fraudulently involving the outcome of a race. With the onset of NSAID's, he thinks the Commission needs to take another look at that and rather than an automatic we may want to take and maybe not by rule but by policy establish when an automatic suspension would be imposed pending a hearing before the Commission, and he would have no issue with that whatsoever. As Attorney Guay has pointed out when they were determining whether the presence of a drug was there the cost was not that prohibited. Now that they are having to determine concentrations it takes that much more time and effort to develop that and therefore the cost currently are running anywhere from \$600 to \$900 per sample if you can get a laboratory that can do it. Even that's becoming more difficult so some of it's because of time constraints and some of it's because of not meeting the ISO standards so we have to find apples to apples. He cannot come before this Commission with an apple and an orange and expect a result. Commissioner Dresser stated that what they've been experiencing is because one of two necessary

elements in order for a stay to be granted is the close question of fact and she's taken the position that anyone who request a split sample or a DNA test then a close question of fact does exist. Then there are those people who might just be waiting for a hearing to say, I know the drug was in the horses system here are my mitigating factors I'd like you to consider. Under the present system, they've been suspended that entire time unless they spend \$600 to \$900 to request that split sample. That's her reason for wanting to move away from that if they can. Mr. Jackson stated that currently the laboratories that he's discussed this with the NSAID's are \$600 to \$900. If you're looking for androgenic or anabolic steroids confirmation standards they're anywhere from \$1,200 up, and if you're looking for some of the medium drugs you're looking at a minimum of \$750. Commissioner Dresser stated that if the horsemen want to spend that money that's certainly their prerogative but she would like to move away from putting them into a position where they either have to stay at home or spend the money in order to participate. Mr. Jackson stated that's the direction he's leaning towards, he doesn't make that decision you members of the Commission make that determination. He reports the results to the Chair. Someone that request a stay goes to the Chair and then she makes a determination whether or not they've indicated it's a close question of fact or a disputed rule interpretation and she in concert with Attorney Guay to make that determination. Commissioner Dresser stated that she brought this up before and she asked Commission Timmons what his thought was. Commissioner Timmons stated that he thought a lot of changes should be made but under this he would go along with the way we are right now. Commissioner Dresser stated that she would not and she would be interested to know what your thoughts were she thinks that it might still be appropriate if we have say blood doping or more serious level violations and even then she's not sure. Commissioner McFarland stated that it's unfortunate that horsemen have to spend unnecessary funds. He doesn't know if it serves a good purpose to suspend them immediately. He would have to think about that a little more. This is a new territory for him but he knows what one or two horsemen have had to go through specifically at Windsor Fair racetrack trying to prove their and it was costly to try to prove first of all. It doesn't know what the right answer is at this juncture. Commissioner Dresser asked to put this item on the December meeting and make a decision on. Mr. Jackson stated that he and Attorney Guay will discuss this and he knows where he stands on this.

EXECUTIVE SESSION:

Commissioner Dresser asked for a motion to go into executive session. Commissioner Timmons made a motion to go into executive session as allowed under Title 1, Section 504, sub-section 6E for discussion of potential legal action with commission counsel. Commissioner McFarland seconded. Vote 3-0.

Commissioner Timmons made a motion to go out of executive session. Commissioner McFarland seconded. Vote 3-0.

Commissioner Timmons made a motion to adjourn. Commissioner McFarland seconded. Vote 3-0.

The meeting adjourned at 12:55 p.m.

Respectfully submitted by:
Henry W. Jackson
Executive Director